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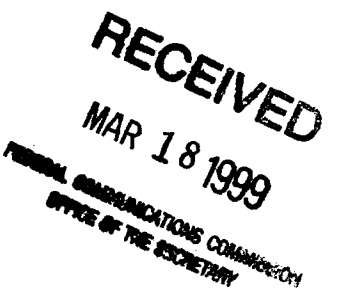
March 18, 1999



Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Further Notice of Proposed Rulemaking in CC Docket No. 94-129

Dear Ms. Salas:

Please find enclosed for filing, the original and four copies of the Competitive Telecommunications Association/ America's Carriers Telecommunications Association ("CompTel/ACTA") Comments, in the above-referenced proceeding. In accordance with the Commission's filing instructions, an electronic copy of this filing formatted on diskette also is being simultaneously delivered to Kimberly Parker and International Transcription Services, Inc. For your convenience, a duplicate copy has been provided for date stamping.

Respectfully submitted,

Peter A. Batacan
Counsel to CompTel/ACTA

PAB:pab

Enclosures

cc: Kimberly Parker

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

To: The Commission

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION/AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION

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Its Attorneys

DATED: March 18, 1999

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SUMMARY

As the representative, national association to over 315 competitive telecommunications carriers, CompTel/ACTA welcomes the Commission's earnest effort in this rulemaking proceeding to propose policies that will facilitate customer choice of long distance and local telecommunications service providers and, at the same time, deter unauthorized changes in a customer's preferred carrier or "slamming." Accordingly, CompTel/ACTA respectfully submits the following recommendations in these comments.

The Commission should encourage, rather than inhibit, Internet-based methods for ordering telecommunications services. It is fair to say that the Internet has fueled unheard-of growth through E-commerce in virtually every retail sector of the U.S. economy. Indeed, the President's official policy is that all federal agencies should encourage the purchase and sale of goods and services over the Internet and avoid governmental intrusion and regulatory barriers to digital commerce. Thus, market forces and federal policy favor Commission action that fosters the purchase and sale of telecommunications services over the Internet. To that end, the Commission should promote use of the Internet-based methods for ordering telecommunications services by according Internet-based customer orders of telecommunications service the same legal effect as a written letter of agency ("LOA"), and treating an electronic signature submitted over the Internet the same as a written signature on an LOA.

Second, the Commission should ensure customers simple and transparent order verification processes by approving minimum content requirements for a verification script and permitting deployment of automated, third-party verification systems for confirming customer preferred carrier changes. Minimum content requirements and automation of the verification

process will remove ambiguity from the ordering process, minimizing the potential for confusion of customers and reducing verification costs to carriers.

Third, CompTel/ACTA recognizes that switchless resellers present unique issues relating to PC changes, but questions whether the proposed alternatives will introduce other concerns that outweigh their effect on the problem the Commission is attempting to address. Proposals that carrier identification codes ("CICs") or psuedo-CICs be assigned to each carrier, or that facilities-based IXCs make numerous changes to their existing billing systems and ongoing billing processes, could have negative consequences and impose burdens on affected carriers and numbering and billing administrators without increasing, and perhaps, even decreasing, consumer options.

Fourth, CompTel/ACTA recommends establishing a neutral, industry-funded, third party administrator ("TPA") for efficient and competitively neutral administration of PC changes and resolution of PC disputes. If established, a neutral TPA could provide a single customer point of contact for all carriers and minimize the frustration some customers may feel in getting the "run-around" when trying to make a complaint.

Finally, CompTel/ACTA questions the utility of various regulatory proposals which are intended to combat slamming but may have the unintended consequence of penalizing or overburdening innocent carriers. These proposals include: requiring double payments by slamming carriers; requiring carrier registrations; requiring carrier slamming reports; and establishing a definition of a "subscriber" authorized to make changes.

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To: The Commission

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION/AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION

The Competitive Telecommunications Association/America's Carriers Telecommunication Association ("CompTel/ACTA"), by its attorneys, hereby submits these comments on the *Further Notice of Proposed Rulemaking* (FCC 98-334) ("*FNPRM*") which was released by the FCC in the above-captioned proceeding on December 23, 1998. With over 315 members, CompTel/ACTA is the principal national industry association representing competitive telecommunications carriers[1] and, hence, it has a direct interest in this proceeding.

In these comments, CompTel/ACTA supports the goal of eliminating slamming. At the same time, CompTel/ACTA urges the Commission to carefully tailor any decisions to permit competitive carriers the freedom to respond to market forces in developing customer-friendly processes for ordering telecommunications services, and to avoid overbroad regulatory

[1] CompTel/ACTA's members include large nationwide carriers as well as scores of smaller regional carriers.

mandates which may inadvertently hinder carrier deployment of competitive telecommunications choices to the detriment of consumers. Accordingly, CompTel/ACTA makes the following recommendations in these comments. First, the Commission should promote use of the Internet as a method for ordering telecommunication services by according Internet-based customer service orders the same legal effect as a written letter of agency ("LOA"). Second, the Commission should ensure customers simple and transparent order verification processes by approving minimum content requirements for verification script and permitting deployment of automated, third-party verification systems for confirming customer preferred carrier ("PC") changes. Third, CompTel/ACTA recognizes that switchless resellers present unique issues relating to PC changes, but questions whether the *FNPRM's* proposed alternatives will introduce other concerns that outweigh their effect on the problem the Commission is attempting to address. Fourth, CompTel/ACTA recommends establishing a neutral, industry-funded, third party administrator ("TPA") for efficient and competitively neutral administration of PC changes and resolution of PC disputes. Finally, CompTel/ACTA questions the utility of various regulatory proposals in the *FNPRM* which are intended to combat slamming but may have the unintended consequence of penalizing or overburdening innocent carriers without materially advancing the elimination of slamming (these proposals include: requiring double payments by slamming carriers; requiring carrier registrations; requiring carrier slamming reports; and establishing a definition of a "subscriber" authorized to make changes).

I. THE COMMISSION SHOULD NOT INHIBIT THE TREMENDOUS GROWTH OF INTERNET-BASED MARKETING

CompTel/ACTA urges the Commission to promote Internet-based marketing of telecommunications services. Permitting telecommunications carriers the freedom to offer and market their services over the Internet will enable telecommunications customers to reap the

same benefits that purchasers of retail commodities and services in virtually every other sector of the U.S. economy are experiencing today through E-commerce. Moreover, permitting customers to shop and sign-up on-line for their telecommunications carrier of choice is consistent with broad federal initiatives to promote E-commerce. Unfortunately, the proposals on Internet verification in the *FNPRM* threaten to stifle the benefits of electronic commerce for telecommunications consumers, and should be revised to further federal Internet policy.

A. MARKET FORCES AND FEDERAL POLICY INITIATIVES FAVOR RAPID GROWTH IN INTERNET-BASED SALES OF ALL RETAIL SERVICES INCLUDING TELECOMMUNICATIONS

Retail shopping over the Internet has experienced astronomical growth over the last few years. Today, many Americans have the luxury of being able to shop and compare quality and price for a wide range of goods and services from the convenience of their laptop or PC, whether it be a book or a CD, a stock purchase or airline tickets and hotel reservations. The convenience of Internet shopping saves time and money, as consumers may compare prices quickly and easily, sometimes even using new tools such as on-line auction houses. In addition to the direct benefit to consumers of increased convenience and price-savings, E-commerce also indirectly benefits consumers by widening markets and promoting new businesses. Internet entrepreneurs are not limited by some of the overhead costs, such as leasing a storefront or maintaining display space, associated with traditional retail businesses.

This almost unparalleled growth in E-commerce is reflected in U.S. Commerce Department estimates which show that the computing and communications industry has accounted for over one-third of the real growth in gross domestic product over the last three

years.[2] Businesses of all sizes are moving rapidly to buy, sell, and distribute products and services over the Internet. Electronic commerce between businesses is growing, and is projected to exceed $300 billion annually by the year 2002.[3] Analysts estimate that Internet-based sales in the 1998 holiday season soared 200 percent compared to 1997 levels, with between $3 billion and $4 billion in goods and services purchased.[4] Internet consultants predict that in 10 years, all business-to-business transactions and as many as 25% of all retail transactions will occur over the Internet.[5]

Consistent with this marketplace boom in E-commerce, it is the federal government's policy that competition and consumer choice, not government regulation, should be the guiding principles in the digital economy. On July 1, 1997, President Clinton announced a *Framework for Global Electronic Commerce.* The *Framework* calls for governments to refrain from imposing unnecessary regulatory actions that could stifle the growth of the Internet and electronic commerce. It also emphasizes private sector leadership; decentralized, technology neutral policy approaches; and minimal government intervention only when necessary to create a predictable, consistent and simple legal environment for commerce.

Concurrent with the announcement of the *Framework*, President Clinton issued a *Presidential Directive on Electronic Commerce* to all heads of executive departments and

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2 U.S. Dept. of Commerce, *The Emerging Digital Economy* at 21 (April 1998).

3 *Id.* at 21.

4 M. Grossman, "On-line Retailing Stampede: A Modern Gold Rush is on, but Wooing Shoppers is Costly, and Profits are Proving Elusive," Chicago Tribune, Feb. 22, 1999, Business at p.1.

5 *See* William M. Bulkeley, "Peering Ahead", The Wall Street Journal, Nov. 16, 1998 at R4 (quoting Kirkland, Washington-based consultant Glenn Hiemstra: " The dot.com generation – people under 18 now – the first place they'll go for news and entertainment and purchasing will be the Internet").

administrative agencies. In the *Directive*, the President declared that "governments must adopt a market-oriented approach to electronic commerce, one that facilitates the emergence of a global, transparent, and predictable environment to support business and commerce."[6] Among other things, the *Directive* instructs agency heads to *revise or eliminate* existing laws and regulations that may hinder the growth of electronic commerce. It states as a guiding principle for directing all future federal agency policy on electronic commerce that: "*Parties should be able to enter into legitimate agreements to buy and sell products and services across the Internet with minimal government involvement or intervention.*"[7] The President reaffirmed these directives in November 1998, when the Working Group on Electronic Commerce ("Working Group") issued the *Electronic Commerce Annual Report.*[8]

Telecom carriers are moving toward Internet-based marketing, but the current uncertainty in Commission policy is stifling the growth of such offers. Many carriers are offering innovative telecommunications services packages though on-line marketing. For instance, Frontier Communications offers a "Web Saver" long distance plan offering 8 ¢ per minute rates for interstate calls, which is available only through its web site. Some carriers, on the other hand, describe their offers but do not allow on-line ordering – presumably due to uncertainty regarding the Commission's treatment of such orders.

In addition to the convenience of on-line sign-up, the Internet can also give telecommunications customers greater control over their use of the network. According to Stewart Gannes, vice president of Internet applications at AT&T Labs, AT&T is experimenting

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6 Presidential Directive on Electronic Commerce, July 1, 1997, available at http://www.ecommerce.gov/presiden.htm.

7 *Id.* (emphasis added).

8 Memorandum for the Heads of Executive Departments and Agencies, November 30, 1998 (available at http://www.doc.gov.ecommerce/presdir.txt.htm).

with systems that use the Internet to allow consumers to control how they can be contacted and by whom.[9] Unfortunately, the proposals in the *FNPRM* threaten to eliminate these benefits of the Internet.

B. THE FCC SHOULD TREAT INTERNET-BASED ORDERS THE SAME AS WRITTEN LETTERS OF AGENCY TO PROMOTE INTERNET PURCHASING OF TELECOMMUNICATIONS SERVICES

CompTel recognizes the Commission's concern stated in the *FNPRM* that customers may inadvertently sign up for long distance service while surfing the web or be misled into entering a sweepstake that results in an unauthorized switch in the customer's long distance carrier. *Id.* at ¶ 169. However, CompTel/ACTA opposes the Commission's tentative conclusion that electronic signatures used in Internet submissions of carrier changes will not be sufficient authorization for carrier change. Disallowing electronic signatures will hinder electronic commerce, contrary to federal Internet policy initiatives and the *FNPRM*'s conclusion that "the Internet is a quick and efficient method of signing up new subscribers and should be made widely available." *Id.* Accordingly, CompTel/ACTA supports subjecting Internet-based orders to the same consumer protection safeguards attendant with paper-based orders and treating Internet authorizations of carrier changes the same as written letters of agency ("LOAs").

To protect consumers, the Commission should provide that an Internet-based order contain all of the information required by Section 64.1150 of the Commission's rules for letter of agency form and content. To prevent the type of confusion or mistake with which the Commission is concerned, moreover, Internet orders should be set forth on a separate document screen whose "sole purpose" is to authorize a switch. Internet orders should not be combined

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[9] Lisa Bransten, "Staying in Touch", The Wall Street Journal, Nov. 16, 1998, at R14.

with sweepstakes or other inducements. *See* 47 C.F.R. § 64.1150(c). With these measures in place, no additional verification of an Internet order is necessary.

The *Further Notice* expresses a concern that an electronically-submitted order does not satisfy the "signature" requirement for an LOA.[10] CompTel/ACTA disagrees with this conclusion. Use of an electronic signature for Internet orders in lieu of a written signature will satisfy the Commission's authorization requirements. A customer's act of filling out a form, typing in one's name and submitting an order to a carrier performs the same functions as signing a paper LOA. Like a written signature, it serves as an acknowledgement of intent, and identification of the person submitting an order. The only difference between a paper LOA signed by a customer and an electronic LOA is the form in which the order is submitted to the carrier.

This difference, however, does not invalidate the signature on the electronic LOA. First, all "paper-based barrier(s) to electronic transactions" should be eliminated.[11] The Congress and many states have enacted legislation to eliminate any discrimination against electronic signatures. The *Government Paperwork Elimination Act* recently adopted by Congress specifically provides that electronic records, including electronic signatures, are not to be denied legal effect, validity or enforceability merely because they are in electronic form.[12] Moreover, 15 states have enacted laws permitting the use of electronic signatures for most or all commercial transactions.[13]

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10 *Further Notice* at ¶ 171.

11 *Electronic Commerce Annual Report* at 2.

12 Act of Oct. 21, 1998, Pub. La. No. 105-277, 1999 U.S.C.C.A.N. (112 Stat. 2681-751 § 1707) 858.

13 These states are: Alaska, Florida, Georgia, Illinois, Kansas, Kentucky, Nebraska, New Hampshire, Oklahoma, Oregon, South Carolina, Tennessee, Virginia, West Virginia and (continued...)

Second, the FCC itself has already recognized the benefits of electronic signatures. The Commission recently revised several of its rules to allow the electronic submission of applications and other documents to the Commission. These rules recognize that a "signature" is not so limited as the *FNPRM* proposes. Instead, a "signature" may appear not only in its traditional handwritten form, but also in the form of "any symbol executed or adopted by the party with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses."[14] Thus, the Commission should clarify that an electronic signature on an Internet-based LOA is equivalent to a written signature on a paper LOA.

One concern expressed in the *Further Notice* is that there are no "safeguards" against forgeries or no "telltale variations" in handwriting to distinguish orders. While it is true that electronic signatures cannot eliminate the possibility of forgery, the same possibility exists with paper LOAs. As the Commission's forfeiture orders demonstrate, the fact that a paper LOA is "signed" is not a guarantee that someone else has not forged the customer's name.[15] But just as it is not proper to outlaw paper LOAs because someone can forge a signature, it is not proper to prohibit electronic LOAs because the same possibility exists.

(...continued)
Wisconsin. *See,* Alaska Stat. §09.25.500-520 (Michie 1998); 1996 Fla. Laws Ch. 96-224; Ga. Code Ann. § 10-12-3 (1998); 5 Ill Comp. Stat 175/1-101 et seq. (West 1998); Kan. Stat. Ann. § 60-2616 (1997); Ky. Rev. Stat. Ann. Ch. 369; Neb. Rev. Stat. § 69 (1998); N.H. Rev. Stat. Ann. § 506:8 (1998); 1998 Okla. Sess Law Serv. Ch. 308 (West); 1997 Or. Laws Ch. 566; S.C. Code Ann. § 26-5-10 to –50, -310 to 360, -510 to 540 (Law. Co-op. 1998); Tenn. Code Ann. § 1-3-105 (1997); 1997 Va. Acts Ch. 59.1-467; W. Va. Code § 39 art. 5 (1998); Wis. Stat. § 137 sub. II (1998) (effec. 7/1/99).

14 47 C.F.R. § 1.52; *see also,* 47 C.F.R. §§ 1.743(e), 1.913(e).

15 *See, e.g., AT&T Corporation,* 11 FCC Rcd 1885 (1996); *Home Owners Long Distance, Incorporated,* 11 FCC Rcd 1808 (1996); *All American Telephone Company, Inc.,* 13 FCC Rcd 15040 (1998); *Brittin Communications International Corp.*, FCC 98-291 (rel. Oct. 29, 1998.

The FCC should not require additional identification information, as suggested in the *FNPRM*,[16] and should be particularly cautious about requiring disclosure of sensitive information consumers may be unwilling to disclose (such as a Social Security Number ("SSN") or a credit card number). First, since additional information provided in an Internet LOA (such as a mother's maiden name) cannot be validated at the time the order is submitted, inclusion of this information would appear to have a negligible effect on slamming. More importantly, CompTel/ACTA is concerned that some of the items – particularly requiring the submission of the customer's SSN and/or a credit card number – may cause customers to be reluctant to submit an order electronically, due to privacy and security concerns. Requiring such information on an LOA, therefore, would hinder the growth of legitimate Internet-based marketing.

II. THE FCC SHOULD MAKE EXISTING VERIFICATION OPTIONS EASIER TO USE AND MORE CONSUMER FRIENDLY

CompTel/ACTA supports allowing automated systems as an alternative to "live" operators in third-party verification of customer preferred carrier changes. *FNPRM* at ¶ 167. Automation can be more cost-efficient than use of live operators in recording PC change verifications. Further, automation may enable a better record to be created than will the use of live third party operators. CompTel/ACTA disagrees, however, with the proposal that the carrier sales representative be permitted to read an "approved" script. *FNPRM* at ¶ 167. This proposal negates the benefit that an independent third party provides.

In addition to permitting automated telephone-based verification, the Commission also should include Internet-based methods of confirming customer choices. For example, carriers should be able to confirm orders by having a customer navigate a series of screens on a

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16 *Id.* at ¶ 172.

website. Internet-based confirmation of sales is increasingly common in numerous E-commerce applications. There is no reason why customers of telecommunications services should be deprived of similar convenience of Internet-based verification in purchasing telecommunications services.

Moreover, the *FNPRM*'s concerns regarding the potential for confusion of customers in automated third-party verification systems is misplaced. The potential for misunderstanding or confusion may, in fact, be higher with live operators than with automated third-party verifications, as live operators may accept ambiguous answers which cannot be re-examined after the fact. In any case, the Commission can limit the potential for customer confusion in both automated and live third-party verifications by specifying a minimum content for verification scripts at the same level of detail as are provided in its rule for LOAs. Thus, CompTel/ACTA recommends that the Commission specify the following as the minimum acceptable content for a live or automated third-party verification script:

- The verifier should state that it is an independent third party, hired to confirm the customer's decision to change carriers
- The verifier should confirm that the customer wants to change from his/her current carrier to the new carrier
- The verifier should confirm the telephone number(s) to be switched
- The verifier should confirm that the customer has authority to authorize a change

Specifying this minimum script will reduce the potential for customer confusion in the PC change verification process.

III. THE FCC SHOULD ACT CAREFULLY IN ADDRESSING PROBLEMS RELATED TO IDENTIFYING RESELLERS FOR PC CHANGES AND SLAMMING COMPLAINTS

CompTel/ACTA recognizes that the potential for confusion or misidentification is a problem that may occur when multiple carriers share the same CIC. As the *FNPRM* states, a

LEC billing system may incorrectly identify the facilities-based IXC as the customer's carrier when a switchless reseller is the customer's actual service provider. *Id* at ¶ 148. Moreover, when a customer alleges slamming, such complaints often are misdirected at the facilities-based IXC as the responsible party when a switchless reseller using the facilities-based carrier's network is, in fact, the cause of the customer's complaint. However, CompTel/ACTA is concerned that the three proposals in the *FNPRM* which are intended to address these problems may unnecessarily impose costs or be wasteful, without offsetting benefit to customers or carriers in reducing potential for confusion.

To address potential problems such as customer confusion, misdirection of customer bills or slamming complaints associated with multiple carrier use of the same carrier identification code ("CIC"), the *FNPRM* proposes three regulatory options: (1) require each reseller to obtain an individual CIC; (2) require each reseller to use a "pseudo-CIC"; and (3) require each facilities-based IXC to, *inter alia*, change billing systems to allow identification of all resellers on a customer bill, and include information on all bills on how to contact the facilities-based IXC if a customer believes he has been slammed by a reseller sharing the same CIC as the facilities-based IXC. *FNPRM* at ¶¶ 154-163. As discussed in this section, CompTel/ACTA urges the Commission to use caution before adopting any of the three options proposed in the *FNPRM*. Each proposal carries with it several disadvantages, which CompTel/ACTA is concerned may ultimately negate their benefits in combating the problem of proper identification.

The first option – requiring each reseller to obtain an individual CIC – carries with it many significant costs for switchless carriers, which tend to be smaller carriers. *Cf.* *FNPRM* at ¶¶ 154-159. It is extremely costly to establish a CIC. Under current rules, a carrier

utilizing a CIC must establish Feature Group D ("FGD") access in each end office serviced, which, in turn, requires installation costs, monthly usage costs, and updates to routing tables of LEC switches. Even if "translations access" is permitted (*i.e.* CIC assignment without the requirement of obtaining FGD), it is unclear whether any benefit in cost-saving to the reseller will develop, as the price of such access has not been determined. If mandated, translations access presumably would still require that a reseller submit an application similar to the access service request ("ASR") which is now required for obtaining FGD from the LEC, and submit an application to NANPA for a CIC. This will increase CIC processing costs for LECs and numbering administrators, in addition to resellers and facilities-based carriers.

In any event, CompTel/ACTA questions whether a reseller CIC mandate could have a negative impact on numbering availability and consumer options. Although the FCC has transitioned to 4-digit codes, CICs are being assigned only with a few initial digits at this time. If every reseller is required to obtain a CIC, it may prematurely exhaust CIC resources. Mandating reseller CICs also will narrow customer options that depend on CIC availability. CICs used for individual reseller identifications will not be available to new dial-around carriers for establishing 101XXXX access ("CAC") code formats.

The second option – requiring each reseller to obtain a "pseudo-CIC" (*i.e.* assigning a four-digit suffix to each reseller to distinguish it from the facilities-based carrier sharing the same CIC) – may impose unacceptable potential costs on facilities-based carriers. *Cf. FNPRM* at ¶¶ 160-164. Implementing a pseudo-CIC regime would require potentially costly changes to LEC and IXC internal systems. It is unclear how much this will cost. Moreover, it is not clear how a pseudo-CIC option would address the problem of misidentification of facilities-based carriers on customer bills and in cases of slamming. Rather, if pseudo CICs are assigned

by the underlying facilities-based carrier, this option still will entail substantial involvement by the facilities-based IXC.

CompTel/ACTA similarly is concerned about the third option, mandating changes to facilities-based IXC billing systems. *Cf. FNPRM* at ¶¶ 165-168. Option three does not reduce the burden on facilities-based carriers, and, instead would increase that burden. The costs of changing IXC billing systems to allow identification of resellers on consumer bills and allow customers to contact the facilities-based IXC if the customer believes he has been slammed puts a continuing burden on the facilities-based IXC as the middle-man in resolving slamming disputes. The *FNPRM*'s focus is too narrow on the potential near-term cost on facilities-based IXCs of providing reseller identification on customer bills. Even if there were no costs associated with this, there are ongoing costs imposed on the facilities-based carrier to assume unforeseeable responsibility for all customer inquiries where the customer believes he or she has been slammed.

Finally, CompTel/ACTA believes that the FCC should evaluate the impact of other potential changes before taking action. A Third Party Administrator ("TPA") approach for slamming complaints may alleviate the problem of misidentification, at least from a consumer's standpoint. If a TPA is structured as a single point of contact for the customer, it would eliminate the "run around" consumers can sometimes feel in tracking down a switchless reseller using another carrier's network. Establishing an industry-funded, neutral third-party administrator to resolve customer complaints stemming from multiple carrier use of the same CIC also may avoid imposing a disproportionate burden on a particular group or carrier, in contrast to the three options proposed in the *FNPRM*.

IV. COMPTEL/ACTA SUPPORTS THE ESTABLISHMENT OF A THIRD PARTY ADMINISTRATOR FOR PC CHANGES

CompTel/ACTA supports the establishment of a neutral, third party to administer changes in a customer's preferred carrier. *FNPRM* at ¶¶ 183-4. Establishing a third-party administrator ("TPA") for PC changes (in addition to a TPA for PC disputes) would avoid the problems inherent where the executing carrier may have a direct or indirect financial incentive to confirm or deny a PC change. In particular, the assumption that ILECs are neutral in administering PC changes is no longer accurate, given their incentive to deny PC changes to competitive LECs ("CLECs") and confirm PC changes to IXCs in which the ILECs may have a current or future financial interest. *Id.* at n.474. Thus, the Commission should take steps to ensure that PC changes are administered in a neutral manner by an independent third party.

In order to ensure neutrality by the TPA, CompTel/ACTA suggests that an administrator: (1) not be owned or controlled by any carrier or telemarketer; (2) not have any direct or indirect financial incentive to favor a particular carrier or telemarketer in administering PC changes; and (3) would not operate in any physical location shared with a carrier or telemarketer.

If a third party administrator is established for resolving PC disputes, the Commission should explore whether the same entity can effectively administer PC changes as well. Consumers and carriers may benefit from economies of scale if a single, industry-funded, third party administrator is established for PC dispute resolutions and administration of PC changes. Neutrality in decisions of an industry-funded, third party administrator verifying PC changes and resolving PC disputes may be encouraged by requiring that the costs of PC change verification and PC dispute resolution be borne by all carriers on a competitively neutral basis as determined by the FCC.

V. OTHER ISSUES

A. Double Payment By Slamming Carrier.

The *FNPRM* proposes that, where a subscriber has paid charges to an unauthorized carrier, the authorized carrier will collect double the amount of charges paid by the subscriber during the first 30 days after the unauthorized change. *Id.* at ¶ 141. CompTel/ACTA opposes this proposal. In the Second Report and Order, the Commission adopted rules designed to eliminate a carrier's profit from slamming, principally by prohibiting an unauthorized carrier from retaining the benefit of the first month's worth of service. The "double payment" proposal, however, is simply a penalty to be imposed on a carrier. There is no basis for such a penalty in Section 258 of the Act, or in any of the FCC's anti-slamming proposals to date. Moreover, it is questionable whether the FCC has authority to impose such a penalty without an adjudication.[17]

B. Carrier Registration Requirements.

CompTel/ACTA opposes adoption of additional carrier registration requirements which may increase burdens on carriers. *FNPRM* at ¶¶ 180-182. The existing requirement in Section 1.47(h) of the Commission's rules that all common carriers designate an agent in the District of Columbia for service of process could be used for the purposes the FCC identifies to locate the carrier subject to slamming complaints, and deter fraud. Even in the absence of the proposed registration requirement, the knowledge of potential exposure to forfeiture liability on any person who commits violations of the Communications Act or the Commission's rules, in conjunction with the new slamming rules, arguably serves the Commission's purposes of minimizing telecommunications fraud. *See* 47 C.F.R. § 1.80(a).

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[17] *See* 47 U.S.C. § 209 (authorizing the FCC to issue orders for payment of money by a carrier after hearing a complaint).

Furthermore, the *FNRPM*'s proposal that a carrier has an affirmative duty to ascertain that another carrier has filed a registration before agreeing to offer service could interfere with private negotiation of resale arrangements. *Id* at ¶ 182. If all new carriers are required to publicly register before they may begin offering service, the public registration process could be exploited to monitor new entrants' market-sensitive plans which might otherwise remain private in a carrier-to-carrier negotiation.

Moreover, the proposed registration standard is overly vague and could delay entry. As proposed, all carriers would have to file information including "a statement on the carrier's financial viability" in the registration. This "financial viability" standard is overly vague and undefined in the Commission's proposed rule. Moreover, such a standard would establish an inconsistency with the other Commission certification processes such as the International Section 214 certification process which does not require submission of information on financial viability to receive a certification. In addition, a carrier would not be able to begin providing service until the Commission has approved the registration (which will not occur until at least 30 days after filing, at the earliest).

C. Carrier Slamming Reports.

CompTel/ACTA opposes the proposal to require carrier slamming reports. The FCC already has the ability to quickly identify potential problem carriers, for example, by means of its telephone consumer complaint scorecards. Moreover, with the new web-based complaint forms, it should be even easier to find the problems quickly.[18]

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[18] If a neutral, third party administrator is established for resolving PC disputes, it may be an appropriate function of the TPA to maintain slamming complaint data it receives about carriers.

D. Definition of "Subscriber".

Although CompTel/ACTA recognizes that it sometimes is difficult to identify a person authorized to make a carrier change, and that some mistakes are made, the FCC should not artificially limit subscribers' ability to change carriers. *Cf. NPRM* at ¶¶ 176-178. Rather, the Commission should rely upon existing state law regarding agency and authority to determine authorized persons.

In any case, if the Commission finds it necessary to describe the term "subscriber" in its PC change rules, CompTel/ACTA suggests that a rule containing language similar to the following may be appropriate: "For the purpose of Part 64, Subpart K of the Rules, the term "subscriber" shall include any person or entity who is a customer of record for telecommunications services, or any person or entity who is authorized, as a matter of contract or law, to select a preferred carrier on behalf of the subscriber." This approach is consistent with the Commission's reliance on existing law for determining multiple dwelling unit owners authorized to terminate cable service on behalf of cable subscribers.[19]

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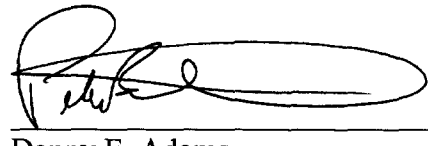
[19] *See Telecommunications Services, Inside Wiring; Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring*, 10 Comm. Reg. (P&F) 193 at para.116 (1997).

VI. CONCLUSION

For the foregoing reasons, CompTel/ACTA submits that the FCC should follow the recommendations governing slamming, PC change authorizations and resolution of PC disputes as set forth above.

Respectfully submitted,

COMPETITIVE TELECOMMUNICATIONS ASSOCIATION/ACTA

By: 

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March 18, 1998

CERTIFICATE OF SERVICE

I, Patricia A. Bell, hereby certify that on this 18th day of March, 1999, a copy of the **COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION/AMERICA'S CARRIERS TELECOMMUNICATIONS ASSOCIATION** was delivered by hand to the following:

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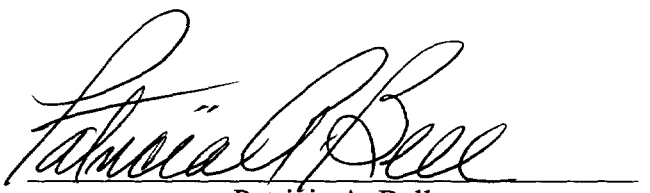

Patricia A. Bell

** Via first class mail